of $81,875.00. The levying provisions of the Alabama foreign corporation franchise tax are contained in Section 348, as amended, Title 51, Code of Alabama 1940, which Section is actually a projection of Article 12, Section 232, of the Alabama Constitution of 1901. (Appendix "F" and "G".)

The tax has been held to relate to a foreign corporation that "does business" in Alabama or to foreign corporations that "do any business in this State". *State v. Plantation Pipe Line Corporation*, 265 Ala. 69, 89 So.2d 549, 561, Cert. Den. 348 U.S. 943, 1 L. Ed. 2d 237. The tax is measured by and confined exclusively to the amount of capital employed by such a foreign corporation within the State of Alabama. (Appendix "F" and "G".)

The Circuit Court of Montgomery County, Alabama, in Equity, (R. 257-271) held the Respondent to be engaged exclusively in interstate commerce, and the tax as applied to the Respondent unconstitutional and void under the Commerce Clause of the Federal Constitution. The Court also vacated and set aside the final assessment on these grounds. On appeal to the Supreme Court of Alabama that Court affirmed the decision of the Circuit Court on the same grounds (R. 280-293), and denied a rehearing on September 15, 1960 (R. 294 and 298).

The issues in the case are tersely drawn in a short bill of Complaint (R. 5-6), and answer thereto (R. 7-8).

The Respondent, Transcontinental Gas Pipe Line Corporation, is a Delaware corporation, and is said to have its principal offices in Dallas, Texas. *Its primary business is the selling of gas.* (R. 9 and 10.)

Respondent is a natural gas company falling within the purview of the Federal Natural Gas Act, 15 U. S. C. 717-717W. As such it is regulated by the Federal Power Commission. (R. 9.)

In order to deliver the gas which it sells to the local markets, the Respondent owns and maintains an elaborate system of pipe lines running from its gas fields in Texas and Louisiana through Mississippi, Alabama and several other states on the eastern seaboard. (R. 139.)

Approximately 207 miles of the main pipe line and 146 miles of 30 inch loop line and 14 miles of 36 inch loop line or a total of some 367 miles of pipe line, lay within the State of Alabama in 1956. (R. 17.) Respondent had three large compressor stations located in Alabama in that year. (R. 13-16.) It had approximately 100 employees in this state who were located at said compressor stations, or who were used to maintain the lines, or who were working in the district office at Alexander City, Alabama, or elsewhere for the company in this state. (R. 14-15.)

Respondent manufactured its own electricity (11,298,938 kilowatts) in Alabama in 1956 through the use of electric generators located at its Alabama compressor stations, which electricity was used to run the pumps and compressors at said stations, and for lighting and other purposes, including the electricity used in dwelling houses maintained by Respondent for its employees at the three compressor stations. (R. 250-251, 14, 17.) The Respondent also pumped from wells and other sources in Alabama and stored in large bulk tanks at its said

three stations in this state all of the water it used commercially in this state and also for use in the dwelling houses which it maintained for employees at these stations. (R. 14-17.)

Respondent in this respect employed within the State of Alabama in 1956 capital in the total amount of, to wit, $30,000,000. It was upon said amount of capital employed exclusively in this state by the Respondent in 1956 that the tax was measured and the final assessment was made. (R. 45.)

Respondent had in 1956 some thirteen customers in Alabama in the form of municipalities to whom it continuously sold and delivered gas during said year. The greater part of the gas was sold and delivered to these customers in Alabama to be distributed and resold, *but a substantial amount was also sold to them to be consumed* and not resold.[2] (R. 248, 249, 24.)

In making the deliveries to its some thirteen customers which it had in this state in 1956, Respondent maintained off the main line twelve meter stations, where the gas was withdrawn from the main line, metered, odorized for safety purposes, otherwise treated, and the pressure reduced to a considerable degree from the main line pressure just before delivery was made to the facilities of said Alabama customers. (R. 23 and 24.)

The Respondent is not a common or contract carrier, nor does it transport the property of others. It is not regulated by the

[2] *Respondent now has one or more industrial customers in Alabama to whom it sells gas also for direct consumption and not for resale, but it was not until the year 1957 that it acquired this industrial customer or customers.*

Interstate Commerce Commission. It is engaged exclusively in transporting its own gas which it is engaged in selling.

At one point in Alabama Respondent maintains a permanent meter station where it interchanges gas with the Southern Natural Gas Company. (R. 24.) In 1956 the Respondent purchased and received through such station in Alabama 148,242,000 cubic feet of gas from Southern Natural. (R. 32.) A substantial amount of this gas was sold and delivered by the Respondent to its customers in Alabama.

Prior to the year 1956 the Respondent had voluntarily qualified to do business in the State of Alabama, and had designated with the Secretary of State a statutory agent. It had also voluntarily paid franchise taxes and permit fees to the state until the year 1956. It had some sixteen motor vehicles which it registered in the State of Alabama for the 1956 year, and it also paid ad valorem taxes, sales and use taxes, income taxes, and unemployment compensation taxes in this state for said year amounting to a total of $278,534.00. (R. 33.)

This statement, of course, does not purport to state all of the facts in the case, but it does refer to what is deemed to be the most important and material ones affecting the questions involved. For the complete facts see R. 9-34, and 35-37.

Reasons for Granting the Writ

This case involves a matter of wide concern, as the question involved is not one which confines itself alone to the State of Alabama. The status of natural gas companies, such as the Respondent in this case, who are engaged primarily in selling

natural gas in not just one but in practically all of the forty-eight states, and which transport the gas which they sell in their own pipe lines, is certainly one that is not very well settled or defined. It is also a matter calling for a construction of the Federal Constitution, and certainly one which should be finally decided by the Federal Courts.

Whether or not a natural gas company regulated by the Federal Power Commission enjoys any different status for the purpose of state taxation than persons who are engaged in selling other property or goods which are produced in one state and transported into and sold in another state is also a question involved in this case and which has not been very clearly answered in the past. It is also one that is still open for conjecture.

The Circuit Court and also the State Supreme Court in their opinions entered in this cause appear never to have quite understood the issues or all of the implications in this case. The cardinal error made by the lower courts in their decisions (R. 280-294, and 257-271, Appendix "A" and "E") was to draw an analogy between the Respondent, a natural gas company engaged primarily in selling natural gas, and certain common carriers who were engaged exclusively in transporting the property of others for hire, namely, *Plantation Pipe Line Company*,[3] *Spector Motor Service*[4] and *Ozark Pipe Line Company*,[5] among others.

[3] *State of Alabama v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So.2d 549, Cert. Den. 353 U.S. 94, 1 L. Ed. 2d 239.

[4] *Spector Motor Service v. O'Connor*, 340 U.S. 602, 71 S.Ct. 508.

[5] *Ozark Pipe Line Corporation v. Monier*, 266 U.S. 555, 45 S.Ct. 184.

In those cases *Plantation Pipe Line Company*, *Spector Motor Service* and *Ozark Pipe Line Corporation* were all common carriers engaged in transporting the property of others for hire. Their sole business was said *to be transportation*, and exclusively interstate transportation. They were not engaged in selling property of any kind nor did they transport their own property, but were certificated common carriers by pipe line or by motor carrier for hire. *The state taxes attempted to have been imposed on them were said to have been directed at their activities of engaging solely in interstate transportation, and were held to be invalid under the Commerce Clause for that reason.*

> "The tax is not levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. Those bases of taxation have been disclaimed by the highest court of the taxing State. It is not a fee for an inspection or a tax on sales or use. It is a 'tax or excise' placed unequivocally upon the corporation's franchise *for the privilege of carrying on exclusively interstate transportation in the State.*"
> (Emphasis supplied)

Spector Motor Service v. O'Connor, 340 U. S. 602, 607, 608, 71 S.Ct. 508, 511.

The same conclusion was also reached by the court in *State v. Plantation Pipe Line Company*, 265 Ala. 69, 89 So.2d 549, Cert. Den. 353 U.S. 94, 1 L.Ed. 2d 239, and in *Ozark Pipe Line Corporation v. Monier*, 266 U.S. 555, 45 S.Ct. 184.

These cases are clearly distinguishable from this case, and other cases involving sellers of natural gas or other commodities who transport their own products which they are engaged in selling, and transport only in order to bring their own

products to the local markets to consummate the sales there. *McGoldrick v. Berwind-White Mining Company*, 308 U.S. 60 S.Ct. 388, 128 A.L.R. 876, *Gaskey Baking Company Commonwealth of Virginia*, 313 U.S. 117, 61 S.Ct. 881, *Southern Natural Gas Company v. State of Alabama*, 301 U.S. 148, 57 S.Ct. 669, *Missouri v. Kansas Natural Gas Company*, 265 U.S. 298, 44 S.Ct. 544, *East Ohio Gas Company v. Tax Commission*, 283 U.S. 465, 51 S.Ct. 499.

> "The business of supplying, on demand, *local consumers is a local business, even though the gas is brought from another state and drawn for distribution directly from interstate mains*; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."
> (Emphasis supplied)

* *Southern Natural Gas Corporation v. State of Alabama*, 301 U.S. at page 151, 57 S.Ct. at page 696.

Missouri v. Kansas Natural Gas Company, 265 U.S. at page 309, 44 S. Ct. at page 546.

The Respondent's business is the selling of natural gas. (R. 9, 22, 24, 35-36.) *It is paid for the gas and not the transportation.* It is not of importance to customers whether the gas is delivered by the Respondent through the use of its own pipe lines or by a third party such as a common carrier for hire. It is true that as a matter of economics the transportation is one of the factors which is considered in fixing the price of the gas, but it is clearly the gas that the customer buys and pays for and not the transportation. Moreover, the delivery of the gas within the state consummates the sale. *McGoldrick*

Vermilion-White Coal Mining Company, 309 U.S. 33, 60 S.Ct. 388, 84 L.Ed. 565, 128 A.L.R. 870.

The Supreme Court of Alabama in its decision in *Santora Service Company v. City of Andalusia*, 256 Ala. 507, 55 So.2d 356, has practically paraphrased the expressions of this Honorable Court in its decision in the *Goldfield* case, by holding:

> "The result is controlled, as we have said, by the fact that the petitioner *was obligated by contract to deliver* the goods into the possession of his customer and in his tanks in the City of Andalusia, and the sale was not complete until that occurred. *Such delivery was a feature of the sale*, not the transportation." (55 So.2d at page 360.) (Emphasis supplied)

These points are also emphasized by the able commentator in speaking of natural gas companies and other public utilities in *Powell's Notes*, 58 Harvard Law Review, at page 1084, as follows:

> "Here the utility has the dual characteristics of carrier and vendor. If it owns what it carries as in the case of electricity it usually if not always does, *its receipts are from sales and not from transportation* even though the transportation enhances the sales price."
> (Emphasis supplied)

And on the same page:

> "... the actual service for which the vendee pays, whether consumer or distributor, *is the supply of the commodity*." (Emphasis supplied)

In *Memphis Natural Gas Company v. Stone*, 335 U.S. 80, 68 S.Ct. 1475, the company (also a natural gas company) maintained 135 miles of pipe line in the State of Mississippi, which

was a component part of its pipe line running from the gas fields in Louisiana through Mississippi to Memphis and other points in Tennessee and into Arkansas. The company had but one customer in Mississippi, the Mississippi Power and Light Company, to which it sold gas from its interstate pipe line at wholesale (obviously under contract and subject to regulation by the Federal Power Commission) to its said Mississippi customer. (335 U.S. 80, 81) In that case this Court held that "the local activities in maintaining, keeping in repair, and otherwise manning the facilities of the system throughout the 135 miles of its line in this state," was a sufficient nexus or local event, apart from the transportation in interstate commerce, at which Mississippi could validly direct and apply its franchise tax. Mississippi's tax in that instance was also said to be a tax upon the "doing of business" within the state, and was, like the Alabama tax, measured by the amount of capital employed or used by the foreign corporation within the state.

We do not know in what regard this Court holds the *Memphis Natural Gas Company* case at this time, but we do wish to point out that this Court has cited the case with authority in some of its most recent pronouncements, including the case of *Spector Motor Service v. O'Connor*, supra, where taxable local activities are referred to. (340 U.S. at pages 609 and 610, 71 S.Ct. at pages 512 and 513.)

It will also be noted (R. 250-251, and 14 and 17), that the Respondent manufactured in Alabama its own electricity, amounting to 11,298,938 kilowatts in 1956, through the use of electric generators which were located at its three Alabama compressor stations. The electricity so generated and manu-

factured in Alabama by the Respondent in 1956 was used to run the pumps and compressors at said stations, for lighting and other purposes, including the electricity used in dwelling houses maintained by Respondent for its employees at said three compressor stations. In the case of *Coverdale, Sheriff, v. Arkansas-Louisiana Pipe Line Company*, 303 U.S. 604, 58 S.Ct. 736, this Honorable Court held that such activity alone was a sufficient nexus or local business event, apart from the interstate transportation in that case, at which the State of Louisiana could validly levy a license tax on the privilege of producing mechanical power within the state, although all of the power so manufactured was used in connection with the taxpayer's interstate pipe line.

Recent decisions of this Court also give rise to the question of how far one can go in the matter of immunity from state taxation of interstate commerce, which has intrastate aspects considering the benefits and protection granted by the states to those corporations which fall in that category. *Scripto, Inc. v. Carson* (decided March 21, 1960), 80 S.Ct. 619, *Williams v. Stockham Valves & Fittings, Inc.*, 358 U.S. 450, 79 S.Ct. 357, *Northwestern States Portland Cement Company v. State of Minn.*, 358 U.S. 450, 79 S.Ct. 357, *E. T. & W. N. C. Transportation Company v. Currie*, 359 U.S. 604, 79 S.Ct. 602, Affirming 248 N. C. 560, 104 S. E. 2d 403, *Wisconsin v. J. C. Penney Company*, 311 U.S. 435, 61 S.Ct. 246, *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, *Southern Natural Gas Company v. State of Alabama*, 301 U.S. 148, 57 S.Ct. 696, *Western Livestock Company v. Bureau of Revenue*, 303 U.S. 250, 254, 58 S.Ct. 546.

F

> "*The taxes imposed are levied only on that portion of the taxpayer's net income which arises from its activities within the taxing State.* These activities form a sufficient 'nexus between such a tax and transactions within a state for which the tax is an exaction'. *Wisconsin v. J. C. Penney Co., supra,* at 445. *It strains reality to say, in terms of our decisions,* that each of the corporations here was not sufficiently involved in local events to forge '*some definite link, some minimum connection. . .*'." (Emphasis supplied)
>
> *Northwestern States Portland Cement Company v. State of Minn.*, 358 U.S. 450, 464, 465, 79 S.Ct. 357, 365, 366.

The Alabama franchise tax on foreign corporations, Title 51, Section 348, as amended, Code of Alabama 1940 (Appendix "E") is a very similar tax to the income taxes involved in some of the cases just above cited or the sales tax or the use tax involved in *Scripto, Inc. v. Carsons*, supra.

It has been held to be a tax on the "doing of business" or on foreign corporations which "do any business in this state." *State v. Plantation Pipe Line Company*, supra, (69 So.2d at page 561). And it is measured or computed only on the basis of just the amount of capital which such a corporation employs within the State of Alabama.

The Alabama foreign corporation franchise tax then is not a "lump sum license" or condition precedent to doing business in Alabama. It is clearly apportioned and limited to the actual amount of capital employed by a foreign corporation in Alabama. It is certainly not discriminatory as it applies to all foreign corporations which do "any business" in this state.

comparable tax is levied on all domestic corporations. See Title 51, Sections 25 and 347, as amended, Code of Alabama 1940.

The tax then is not strictly speaking a franchise (a right or license to enter and to do a certain thing in this state) nor is it a lump sum license (giving some special right or privilege). It is merely a tax levied on a foreign corporation when such corporation does any business in the state for the protection and privileges afforded by the state. The tax is also collected in the usual way that other taxes are collected and enforced.

Hollingsworth & Whitney Company v. State, 241 Ala. 96, 1 So.2d 387.

State v. Plantation Pipe Line Company, 265 Ala. 60, 89 So.2d 549.

Memphis Natural Gas Company v. Stone, 335 U.S. 80, 67 S.Ct. 1475.

We, therefore, respectfully submit that such a tax directed at that part of the Respondent's business which takes place in Alabama, namely, and mainly, the continuous sales of natural gas which Respondent made to its thirteen customers in Alabama in 1956, and measured by and apportioned to just the amount of capital employed by the Respondent in this state, appears to have been repeatedly upheld by this Honorable Court.

Scripto, Inc. v. Carsons (1960), 80 S.Ct. 619.

Northwestern States Portland Cement Company v. State of Minnesota, 358 U.S. 450, 79 S.Ct. 357.

Field Enterprises, Inc. v. State of Washington, 352 U.S. 806, 77 S.Ct. 55, 1 L.Ed. 2d 39, affirming 289 P. 2d 1010, 1012.

Berkshire Fine Spinning Associates v. City of New York, 80 S.Ct. 86 (1959), dismissing for want of a federal question 157 N.E. 2d 614.

Southern Natural Gas Company v. State of Alabama, 301 U.S. 148, 57 So.2d 696.

Memphis Natural Gas Company v. Stone, 335 U.S. 80, 68 S.Ct. 1475.

McGoldrick v. Berwind-White Coal Mining Company, 309 U.S. 33, 60 S.Ct. 388.

Missouri v. Kansas Gas Company, 265 U.S. 298, 309, 44 S.Ct. 544.

Western Livestock Company v. Bureau of Revenue, 303 U.S. 250, 58 S.Ct. 546.

Decisions Under the Federal Natural Gas Act

The decisions of the lower courts even disregard the provisions of the Federal Natural Gas Act, 15 U. S. C. 717, if such Act can be said to be at all applicable to the state tax field. This Act is first and primarily a regulatory law. It is doubtful that it applies to taxation at all, or that the Congress under the Act has chosen to enter anything more than the regulatory field.

Notwithstanding Section 1(b) of the Act, 15 U. S. C. 717(b), confines the application of the Act to sales made in interstate commerce for resale. It expressly excludes sales made for direct consumption and not for resale. *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana*, 332 U.S. 507, 68 S.Ct. 190.

The undisputed evidence in this case shows that at least a substantial amount of the natural gas sold by the Respondent

in Alabama in 1956 was sold for direct consumption and not for resale (R. 35-36, 248-249). The records of most of these purchasers in Alabama have also been kept to show a breakdown between the gas distributed and the gas directly consumed and not resold. (R. 35-36.)

Whether a state can tax sales made at wholesale to customers in Alabama (or in any of the other states), where the delivery is made in Alabama directly to such wholesale customers by natural gas companies which are engaged in the business of selling gas in Alabama, is certainly an open question. It is also one, considering the rights of the states under the Constitution, that is certainly not clearly answered under the Federal Natural Gas Act, but would better appear to be governed by the general taxing powers given the states, as balanced against other provisions of the same Constitution.

Several of the recent cases of this Court including *Scripto, Inc. v. Carson*, supra, *Northwestern States Portland Cement Company v. State of Minnesota*, supra, *Memphis Natural Gas Company v. Stone*, supra, among others heretofore cited, seem to clearly make no distinction between wholesale and retail sales, and clearly indicate that the states can validly tax or direct a tax where a sufficient "nexus" exists in the taxing state, at sales made therein without regard to a distinction between retail and wholesale sales. Some of these cases also strongly indicate that continuous sales made day after day or month after month clearly constitute doing business in the state, and actually is equivalent to having a place of business in the state, and certainly constitutes a sufficient "nexus" to associate such sales with the taxing state.

International Shoe Company v. Washington, 326 U.S. 310, 66 S.Ct. 154.

West Publishing Company v. McColgan, 328 U.S. 823, 66 S.Ct. 1378.

Scripto, Inc. v. Carson (decided March 21, 1960), 80 S.Ct. 619.

However, the Natural Gas Act for regulatory purposes does clearly recognize that sales made by such companies directly to the consumer and not for resale are local activity.

In *State of North Dakota v. Federal Power Commission*, 247 Fed. 2d 173, and at page 177, the United States Court of Appeals, Eighth Circuit, observed that, while the Natural Gas Act does not embrace intrastate commerce, *it is clear that a natural gas pipe line company can be engaged in both intrastate as well as interstate business, and the intrastate portion of its business not be subject to* Federal Power Commission jurisdiction. See also *Colorado Interstate Gas Company v. Federal Power Commission*, 324 U.S. 581, 585, 65 S.Ct. 829.

This would certainly strongly also indicate that by virtue of their taxing powers under the Constitution that the states could without a doubt validly tax sales made directly to the consumer and not for resale or can validly direct and apply the tax at one engaged in the business of continuously making such sales in the taxing state.

Powell's Notes, 58 Harvard Law Review, 1072, 1082.

Panhandle Eastern Pipe Line Company v. Public Service Commission, 332 U.S. 507, 68 S.Ct. 190, 195.

International Shoe Company v. Washington, 326 U.S. 310, 66 S.Ct. 154.

The evidence in this case clearly shows in most instances the actual amount of gas used and consumed by the purchaser is distinguished from the amount resold or distributed. (R. 96.)

> "The Supreme Court has from the beginning allowed the state both to tax and fix the price on the first sale or delivery of gas or electricity brought in from a sister state when and if this first sale is also necessarily the last sale because consummated by consumption." (Emphasis supplied)
>
> Powell's Notes, 38 Harvard Law Review, 1072, 1083, and cases cited

See also in this respect

Pennsylvania Gas Company v. Public Service Commission, 252 U.S. 23, 40 S.Ct. 279

Panhandle Eastern Pipe Line Company v. Public Service Commission, 332 U.S. 507, 517-519, 68 S.Ct. 190.

Panhandle Eastern Pipe Line Service vs Mich. Public Service Commission (1951), 341 U.S. 329, 71 S.Ct. 777.

Panhandle Eastern Pipe Line v. Federal Power Commission, (Court of Appeals, 3d Cir., 1956) 232 F.2d 467, 471, 473.

Kansas-Nebraska Natural Gas Company v. City of St. Edwards, Neb., (8th Cir. 1956) 234 F.2d 436, 440, 441

State of North Dakota v. Federal Power Comm. (8th Cir. 1957) 247 F.2d 173, 177, 178.

The extent of the Federal control in the sale of natural gas, for regulatory purposes under the Natural Gas Act is clearly

outlined by this Court in the *Panhandle Eastern Pipe Line* case, supra, (68 S.Ct. at p. 195), as follows:

> "*The omission of any reference to other sales, that is, to direct sales for consumptive use*, in the affirmative declaration of coverage was not inadvertent. It was deliberate. For Congress made sure its intent could not be mistaken by adding the explicit prohibition that the Act 'shall not apply to any other . . . sale' (but sales for resale or wholesale sales) . . . ." (Emphasis supplied)

In the *Panhandle Eastern Pipe Line case, supra, this Court held that all sales made to industrial users or otherwise for direct consumption* and not for resale, were excluded from Federal control.

This Court in refuting the Appellant's contentions to the contrary in that case held:

> "The exact opposite is the fact. Congress, it is true, occupied a field. But it was meticulous to take in territory which this Court had held that the states could not reach. *That area did not include direct consumer sales, whether for industrial or other uses.* Those sales had been regulated by the State and the regulation had been repeatedly sustained. *In no instance reaching this court had it been stricken down.*" (Emphasis supplied)

In *East Ohio Gas Company v. Tax Commission of Ohio*, supra, this Court upheld an Ohio license tax levied on one engaged in the business of supplying to consumers natural gas for heat, light, etc., purposes, where the company made sales direct to consumers and not for resale, although the gas was transported in interstate commerce.

In so holding, the Court said:

> "The business of supplying, on demand, local customers is a local business, even though the gas be brought from another state and drawn for distribution directly from the interstate mains; *and this is so whether the local distribution be made by the transportation company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance.*" (Emphasis supplied)

The case of *State Tax Commission of Mississippi v. Interstate Gas Company*, 284 U.S. 41, 52 S.Ct. 62, involved only wholesale sales, or sales for resale. In that case the *Interstate Natural Gas Company* sold only at wholesale, or to "distributors" for resale; there were no sales involved made directly to consumers. Its doctrine also appears to have been considerably weakened if not overturned by the Court's later decisions in *Memphis Natural Gas Company v. Stone*, 335 U.S. 80, 68 S.Ct. 1475, *Southern Natural Gas Company v. Alabama*, 301 U.S. 148, 57 S.Ct. 696, *Stone v. Interstate Natural Gas Company* (C. of A. 5th Cir.) 103 F.2d 544, 549, Aff'd. per curiam in *Interstate Natural Gas Company v. Stone*, 308 U.S. 522, 60 S.Ct. 292.

The latest pronouncements of the Federal Courts, including the case of *State of North Dakota v. Federal Power Commission* (8th Cir., 1957) 247 F.2d 173, 177, 178 give sanction to the long line of decisions which hold deliveries and sales made directly to consumers and not for resale to be local events apart from interstate commerce even though the deliveries are made and the sales consummated at the end of an interstate journey.

In the *North Dakota* case the Court held in this respect (247 F. 2d at pages 177 and 178, as follows:

> "That the Act (speaking of direct sales for consumption) does not embrace intrastate commerce is clear from the act itself and from judicial interpretation thereof. (Citing among other cases, *Panhandle Eastern Pipe Line Co. v. Public Service Commission*, 332 U.S. 507, 68 S.Ct. 190)."

And then again on page 177 of 247 F.2d:

> "That gas pipe line companies can be engaged *in both intrastate as well as interstate* business . . ., and have the intrastate business not subject to Federal control is now well settled." Citing *Colorado Interstate Gas Company v. Federal Power Commission*, 324 U.S. 581, 65 S.Ct. 829. (Emphasis supplied)

This unbroken line of authorities appears to have removed all doubt concerning the right of the state to levy this tax as directed at that part of the Respondent's business in Alabama of making said sales for direct consumption and not for resale.

Conclusion

For the above and foregoing reasons, it clearly appears that the lower courts have grievously erred in their decisions in this cause, and that there is clearly a very substantial Federal question involved, and that this petition for writ of certiorari should be granted.

Respectfully submitted,

MacDONALD GALLION,
Attorney General of Alabama

GUY SPARKS,
Executive Assistant, Department of Revenue, and Special Assistant Attorney General of Alabama

WILLIAM H. BURTON,
Assistant Counsel, Department of Revenue, and Assistant Attorney General of Alabama

Counsel for the Petitioner, State of Alabama

Proof of Service

We, MacDonald Gallion and William H. Burton, two of the Attorneys for the Appellee, State of Alabama, in this cause hereby certify that on the _____ day of November, 1960, we served copies of the foregoing petition for a writ of certiorari and supporting papers on the Honorable Sam M. Johnston, Johnston, McCall and Johnston, Attorneys at Law, Box 771, Mobile, Alabama, and upon the Honorable E. T. Brown Jr., Cabaniss & Johnston, Attorneys at Law, First National Building, Birmingham 3, Alabama, as Counsel for the Respondent, Transcontinental Gas Pipe Line Corporation, by mailing copies of same to them in a duly addressed envelope, with first class postage prepaid, United States mail.

MacDONALD GALLION,
Attorney General for Alabama

WILLIAM H. BURTON,
Assistant Attorney General for Alabama
201 Administrative Building, Montgomery
Alabama

Counsel for the Appellee